Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

SAM WRIGHT, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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38 pp

QUESTIONS PRESENTED

Important questions for review, not previously decided by this court concerning the constitutionality of the functioning of the Supreme Court, are presented by this case. The questions are:

1. Whether the Justices of the Supreme Court of the United States, during the legislative process that resulted in the passage of the Judiciary Act of 1925, performed a legislative function assigned by the Constitution of the United States to the Congress of the United States.

2. Whether the Congress of the United States, during the legislative process that resulted in the passage of the Judiciary Act of 1925, improperly delegated to the Justices of the Supreme Court of the United States a function assigned to the Congress of the United States by the Constitution of the United States.

3. Whether the Justices of the Supreme Court of the United States, during the legislative process that resulted in the passage of the Judiciary Act of 1925, exercised a power not granted by the Constitution of the United States when they rendered an opinion, regarding the bill, to the Congress of the United States.

4. Whether the Constitution of the United States grants the Congress of the United States the power to authorize the Justices of the Supreme Court of the United States to base the granting of a petition for a writ of certiorari upon vague, arbitrary, capricious, and other than legal standards, instead of the correctness or incorrectness of granting the petition for a writ of certiorari.

5. Whether the Right of the People to petition the Government of the United States for a redress of grievances, guaranteed in the First Amendment to the Constitution of the United States, includes the right to bring a lawsuit against the Government of the United States, or any official thereof.

a. Whether sovereign immunity, insofar as the Government of the United States exercises it as a defense against a suit brought by a citizen of the United States, abridges the Right of the People to petition the Government for a redress of grievances.

b. Whether absolute immunity, insofar as a Government Official of the United States exercises it as a defense against a suit brought by a citizen of the United States, abridges the Right of the People to petition the Government for a redress of grievances.

c. Whether qualified immunity, insofar as a Government Official of the United States exercises it as a defense against a suit brought by a citizen of the United States, abridges the Right of the People to petition the Government for a redress of grievances.

d. Whether government contractor immunity, insofar as it is exercised as a defense against a suit brought by a citizen of the United States, abridges the Right of the People to petition the Government for a redress of grievances.

6. Whether the Federal Tort Claims Act, which abridges the Right of the People to petition the Government of the United States for a redress of grievances, is constitutional.

LIST OF PARTIES

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Petitioner, Sam Wright, Jr., Pro Se, respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is reproduced in the Appendix, pp. 8a to 9a. The District Court's decisions are reproduced in the Appendix, pp. 1a to 7a.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on September 11, 1998 (Appendix, pp. 8a to 9a). This petition for certiorari is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

Petitioner filed a class complaint, verified in accordance with 28 U.S.C § 1746, in the United States District Court for the Eastern District of Virginia, Alexandria Division, alleging that the doctrine of

sovereign immunity, insofar as the Federal Government asserts the defense against lawsuits brought by citizens of the United States, the Act of February 13, 1925, ch 229, 43 Stat. 936 (also known as the Judiciary Act of 1925), and the Federal Tort Claims Act are repugnant to the Constitution of the United States. The complaint also alleges that Petitioner and others similarly situated have suffered injury in fact as a result.

Respondent filed an unsupported motion to dismiss the class complaint. Prior to discovery, the district court granted Respondent's unsupported motion and dismissed the complaint, without hearing oral argument, because the district court believes Petitioner does not have standing to bring this action. The Court of Appeals affirmed the district court's decision.

REASONS FOR GRANTING THE PETITION

This case presents questions, not previously decided by this Court, of grave importance to each and every citizen of this country and to the Government. The questions presented concern:

- The constitutionality of the standards this Court uses to grant or deny a review of an inferior court's decision considering the role that the Constitution mandates for the Supreme Court and the constitutional right to justice.

- The constitutionality of the Act of February 13, 1925 (also known as the Judiciary Act of 1925) when the powers exercised by Congress and the Supreme Court during the creation of this Act are compared to the powers that the Constitution grants Congress and the Supreme Court. This Act is the basis for thousands

upon thousands of citizens being denied an appeal as of right.

- The constitutionality of sovereign, absolute, qualified, and the government contractor immunity established by the Federal courts, as well as the constitutionality of the Federal Tort Claims Act, when they are subjected to the prohibition in the First Amendment and considering that common law, which is the basis for the immunities, has not been fully incorporated into the Constitution.

1. The Act of February 13, 1925 (also known as the Judiciary Act of 1925) is a result of Congress and the Justices of the Supreme Court exercising powers not granted in the Constitution and it is used to deny citizens the right of appeal.

Congressional records (Hearing before the Committee on the Judiciary, House of Representatives, 68th Congress, 2nd Session, on H.R. 10479 and Senate Report, No. 362, 68th Congress, 1st Session, Sen. No. 8220) show that:

- Members of Congress suggested that the justices of the Supreme Court prepare a bill.
- The Supreme Court Justices formed a committee and prepared a bill.
- The draft of the bill prepared by the Justices of the Supreme Court was introduced into the House and Senate and in hearings held by the House Judiciary Committee.
- The Chief Justice of the Supreme Court, instead of a member of Congress, sponsored the legislation.

- Senator Cummins, Chairman of the Senate Judiciary Committee, relied on the judicial authorship of the bill.
- Congress clearly understood that the bill was written by the justices of the Supreme Court and not by members of Congress. Chief Justice Taft and Justices Van Devanter, McReynolds and Sutherland were afforded the opportunity to render advice and a statement of the Court's views in hearings held on the bill by the House Judiciary Committee.
- Congress deferred to the prestige of the Supreme Court and its Chief Justice.

The essence of the legislative authority granted Congress is the making of laws. An important part of making a law is the creation of the bill because the bill specifies the details. Congress granted the Justices of the Supreme Court legislative power. The Constitution does not give Congress the authority to grant the Justices of the Supreme Court legislative power.

The Framers of the Constitution had the choice of assigning an active share in the process of creating legislation to the Supreme Court, yet they did not do so. The Framers knew New York's Council of Revision. It had been functioning since 1777. Pages 21 and 22 of The Records of the Federal Convention of 1787 (edited by Max Farrand 1911) show that during the Federal Convention of 1787, Mr. Randolph proposed a resolution on May 29 that there should be a Council of revision composed of the President and members of the Federal Judiciary. This Council of revision should have authority to examine every act of Congress before it becomes law and that this Council could reject an act of Congress. The Framers of the Constitution did not include this resolution in the Constitution. Therefore, they rejected this proposal

and chose not to permit the judges of the Federal Judiciary, including the Justices of the Supreme Court, to render advice concerning pending legislation or to have any part in the making of a law. The Constitution does not grant the Justices of the Supreme Court any participation in the legislative process.

The Supreme Court has acknowledged that the Justices of the Supreme Court do not have any authority to comment on legislation before the adjudication of a case requires them to do so. See Steamship Co. v. Emigration Commissioners, 113 U.S.33, 39 (1885); United States v. Evans, 213 U.S. 297, 301 (1909); Muskrat v. United States, 219 U.S. 346, 355 (1911); Stearns v. Wood, 236 U.S. 75, 78 (1915); White v. Johnson, 282 U.S. 367, 373 (1931); Spector Motor Co. v. McLaughlin, 323 U.S. 101, 105 (1944); Coffman v. Breeze Corporations, 323 U.S. 316, 324-325 (1945); Asbury Hospital v. Cass County, 326 U.S. 207, 213-214 (1945); Federation of Labor v. McAdory, 325 U.S. 450, 461 (1945). Some of these decisions are many years before the Judiciary Act of 1925 and some are many years after it. All of these decisions make it clear that the Justices of the Supreme Court do not have the authority to give Congress an advisory opinion concerning the Judiciary Act of 1925.

The Constitution does not give Congress the authority to enlarge or diminish the power that the Constitution delegates to the Supreme Court. The congressional records previously mentioned show that Congress, in spite of the Constitution, permitted a committee of justices of the Supreme Court to draft a bill and that Congress allowed Justices to render an advisory opinion concerning the Judiciary Act of 1925, while the Act was still pending legislation.

The Supreme Court's judicial power does not include the power to decide and comment on laws before

the Supreme Court is called upon to enforce them. The Constitution, in Article I, makes it clear that the task of creating legislation is a task for the elected members of Congress — not for the appointed justices of the Supreme Court. The framework in the Constitution (1) was intended to separate power so that law making and judicial powers would be in separate hands and (2) prevents the Judicial Branch of the Government from exercising powers delegated to the Legislative Branch.

The Constitution and the facts clearly show that, during the law making process involving the Judiciary Act of 1925, the Justices of the Supreme Court exercised a legislative function when they drafted the bill. When Congress permitted the Justices of the Supreme Court to prepare a bill, Congress substituted the Justices for members of Congress in one of Congress' most important constitutional functions. Confirmation that the Justices of the Supreme Court, not any member of Congress, wrote the bill is found in the testimony of Chief Justice Taft and Associate Justice McReynold before Congress and in the statement of Senator Cummins in Senate Report No. 362, 68th Congress, 1st Session, Serial No. 8220. In this Senate Report Senator Cummins says "the bill was prepared by a committee of the members of the Supreme Court after a long and careful study of the subject, at the suggestion of the American Bar Association, and has the approval of every member of that Court." In the case of American Automobile Ass'n v. United States, 367 U.S. 687, 697, the Supreme Court recognized the impropriety of writing a bill for Congress. In this case Mr. Justice Clark in delivering the opinion of the Court said, "We must leave to the Congress the fashioning of a rule which, in any event, must have wide ramifications." The Justices did not leave the fashioning of the Judiciary Act of 1925 to Congress.

The Justices of the Supreme Court and the members of Congress are bound by the Constitution. The Constitution requires each member of Congress and each Justice of the Supreme Court to take an oath to support the Constitution. Members of Congress acted beyond the bounds of authority granted in the Constitution by permitting the Justices of the Supreme Court to draft the bill and then permitting the Justices of the Supreme Court to comment on the pending legislation. The Justices of the Supreme Court acted beyond the authority granted in the Constitution when they drafted the bill and then commented on the pending legislation. The Judiciary Act of 1925 removed large numbers of appeals as of right and reduced citizens to requesting, rather than demanding, an appeal.

2. This Court uses a standard to select cases to review that is vague, arbitrary, capricious, and denies citizens their constitutional Right to justice.

The Justices do not use any firm standard to control the issuance of a writ of certiorari. They select cases to hear based on vague, arbitrary, and capricious criteria. The reason the Supreme Court gives as the basis for issuing a writ of certiorari is that the Justices of the Supreme Court must think that the case is of some national importance. If a case concerns only the constitutional rights of one citizen, then the petition for a writ of certiorari is routinely denied.

The Constitution does not base the right to have an appeal heard by the Supreme Court on what anyone, including any Justice of the Supreme Court, thinks about the importance of the case. The Constitution does not base the Supreme Court's duties or responsibilities on how the Justices feel about anything. The Constitution

says that the violation of a right is enough basis for the Supreme Court to hear a case. The right to secure a review of decisions of the inferior courts does not depend on any discretionary power of the Supreme Court.

The Constitution does not grant the Supreme Court the authority to refuse to hear cases based on how the Justices feel about the case. Congress is not granted the authority to empower the Supreme Court to refuse to hear cases properly brought before it based on arbitrary and capricious standards.

The definition of a writ of certiorari says that it is issued *on proper cause shown.* In other words, a person shows the court that there is valid reason **based on the law** to issue the writ of certiorari. The standard for the use of a prerogative writ, including the writ of certiorari, was set by the Supreme Court in 1803 in the case of Marbury v. Madison, 5 U.S. (1 Cranch) 137. In this case, Chief Justice Marshall said, "*It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus, is to be determined.*" Thus, the standard to be used in deciding to issue a writ of discretion, including a writ of certiorari, is the propriety (correctness) or impropriety (incorrectness) of issuing the writ. The standard used by the Justices of the Supreme Court is not based on the correctness or incorrectness of issuing the writ. The Supreme Court's stated position is that whether the case was decided rightly in the court below is not the consideration that determines the action of the court.

When Congress said that cases get to the Supreme Court by writ of certiorari, Congress actually said that cases get to the Supreme Court by way of an order issued by the Supreme Court, on proper cause shown, to an inferior court requiring an inferior court to produce a certified record of the case. The Judiciary Act of 1925

does not use contain the words "at the discretion of the court" or "may at their discretion" or "if it shall appear to the satisfaction of the court." The Constitution requires, because it mandates justice, that proper cause and the correctness or incorrectness of issuing the writ must be based on the law of the case; not on what national importance the Justices place on the case. Once a person shows proper cause (i.e., the violation of the Rights guaranteed in the Constitution) the Constitution requires that the Supreme Court issue the writ because the Constitution requires justice. The standard used by the Justices of the Supreme Court is not based on justice or the law of the case.

The powers and responsibilities of the Supreme Court are established by the Constitution, not by Congress and not by the desires of the Justices that are appointed to the Supreme Court. Article VI of the Constitution requires the Justices of the Supreme Court, as judicial officers of the United States, to be bound by oath to uphold the Constitution.

Justice is the **proper** administration of laws and the **constant** and **perpetual** disposition of legal matters or disputes to render every man his due. Justice requires the Supreme Court to remedy wrongs and to correct the errors of the inferior courts. The Constitution prevents the Supreme Court from refusing justice to anyone.

Respectfully, Congress did not confer on the Supreme Court discretion to decline to review cases if they did not seem to the Court to be worthy of further review. "*It would be a very bold construction to say, that this power could be applied in its appellate form only, to the most important class of cases to which it is applicable.*" Chief Justice Marshall, Osborn v. Bank of the United States, 1824. The Chief Justice is referring to the judicial power granted by the Constitution.

The Constitution requires the Supreme Court to supervise the inferior courts created by Congress. If this were not so, then the courts created by Congress could act as equals to the Supreme Court. The Supreme Court of the United States acknowledges that it has supervisory responsibility over the inferior courts. The Constitution assigns the Supreme Court the role of overseer, not only to declare definitively, with final and binding interpretations of the law, what law exists, but also to make certain that all public officials, including the inferior courts, obey the law. The Supreme Court is required to perform all of its duties all of the time.

When a person alleges a denial of any right secured by the Constitution, or a person alleges that the inferior courts have failed to follow the Supreme Court's decisions, and the case is within the Supreme Court's appellate jurisdiction and is properly brought before the Supreme Court, Article III of the Constitution requires that the Supreme Court hear the case. However, the Supreme Court arbitrarily refuses to hear such cases.

Supreme Court decisions, that are not contrary to the Constitution, are to be adhered to by the inferior courts until those decisions are reversed. When inferior courts issue decisions that do not conform to lawful Supreme Court decisions, inferior courts act arbitrarily and capriciously. No court may act arbitrarily and capriciously because the Constitution requires proper administration of the law (justice) and arbitrary and capricious acts are not proper administrations of the law. The Supreme Court's constitutional obligations prevent it from arbitrarily or capriciously refusing to correct injustice.

The detrimental effect of the Supreme Court's practice of choosing which cases it will hear is far reaching and the practice weakens our entire judicial system. Each time an inferior court fails to follow or

incorrectly applies decisions of the Supreme Court, the results have overtones of public importance because the uniformity of national law is threatened. The lawful decisions of the Supreme Court are of no importance if those decisions are not followed and are not enforced. The Supreme Court's decisions are to be used by the inferior courts and by the Executive Branch in the performance of their legal duties. The Supreme Court must enforce its decisions; or else its decisions are empty rulings leaving the Rights of the People unprotected. This is one of the reasons that the Constitution does not permit the Supreme Court to exercise any discretion with regard to whether the Supreme Court will correct the errors of inferior courts when those errors are properly brought before the Supreme Court.

Citizens have the constitutional right to have a case decided in accordance with the law of the land. When an inferior court issues a decision contrary to a decision of the Supreme Court, the Right to have one's case reviewed by the Supreme Court is a Right protected in the Constitution. The Constitution prevents Congress or Justices of the Supreme Court to deny or in any way abridge the rights of the People. The Supreme Court fails to fulfill its constitutional responsibilities when it uses vague, arbitrary, and capricious standards to deny a writ of certiorari. Citizens are deprived of the constitutional right to justice each time the Supreme Court refuses based on a vague, arbitrary, and capricious standard to issue a writ of certiorari.

Whenever an inferior court issues a decision contrary to a decision of the Supreme Court and the Supreme Court refuses to correct the decision of the inferior court, the inferior court is no longer of lower rank, but is elevated to a position equal to the Supreme Court. Article III of the Constitution forbids any of the inferior courts from becoming the equal of the Supreme

Court because Article III provides for only one Supreme Court.

The very purpose of the Constitution and the Bill of Rights is to establish legal principles to be applied by the courts — all of the courts, all of the time. The Supreme Court and the inferior courts sit to adjudicate cases involving alleged denials of constitutional rights. The Constitution requires (1) the inferior courts to make decisions consistent with the Constitution, (2) the inferior courts to adhere to the decisions of the Supreme Court, and (3) the Supreme Court to correct the decisions of inferior courts. Such requirements are essential to the maintenance of an orderly society. When a petition for a writ of certiorari alleges that the inferior court has decided a case contrary to decisions of the Supreme Court, the rights secured by and responsibilities assigned in the Constitution prevent the Supreme Court from denying an individual's petition simply because the Justices feel that the case is of no great importance.

The Constitution has tasked the Supreme Court with an important role in the constitutional system. The Supreme Court's judicial authority, as conferred by the Constitution, imposes the solemn, judicial duty to police the decisions of the inferior courts. The Supreme Court is bound by that judicial obligation and the Supreme Court may not refuse or neglect to perform its duty. In the case of Pierson v. Ray, 386 U.S. 547 (1967) the Supreme Court reasoned that it is a judge's duty to decide all cases within his jurisdiction that are brought before him. The judge's duty described by the Supreme Court in *Pierson v. Ray* must apply also to the Justices of the Supreme Court.

The Supreme Court supports the doctrine of absolute immunity for judicial officers by declaring that the correctability of a judge's error on appeal is one of "the safeguards built into the judicial process." See Butz

v. Economou, 438 U.S. 478, 512. This position requires that these "safeguards" be in place 100 per cent of the time. There are three levels in the Federal court system. The first level is made up of the district courts. The second level is made up of the courts of appeals. The third level is the Supreme Court. The reasoning of the Supreme Court is that the errors by the judges in the district courts will be or can be corrected by the judges in the courts of appeals; and the errors by the judges in the courts of appeals will be or can be corrected by the Supreme Court. It is impossible for the Supreme Court to correct the errors of judges in the courts of appeals when the Supreme Court refuses to hear the cases. It is impossible to have correctability of error on appeal when the Supreme Court arbitrarily decides which cases it will hear. Using the rationale from the Justices of the Supreme Court, the Supreme Court's practice of issuing a writ of certiorari based on vague, arbitrary, and capricious standards is destructive to the safeguards in our judicial system and denies citizens the constitutional right to justice.

The Supreme Court is an officer of the law and cannot at its discretion sport away the vested rights of the people. The Supreme Court's practice of selecting cases to review based on its vague, arbitrary and capricious standard offends the Constitution.

3. Sovereign, absolute, qualified, and the government contractor immunity and the Federal Tort Claims Act abridge the First Amendment Right to petition the Government for a redress of grievances and are constantly used to deny citizen's this right.

The Government is a government of expressed and limited powers, and all powers from the People not delegated to the Government are retained by the People and by the States. The First Amendment to the Constitution establishes the following rights: (1) freedom of religion, (2) freedom of speech, (3) freedom of the press, (4) the right to peaceably assemble, and (5) the right to petition the government for a redress of grievances. The First Amendment also forbids the making of any law that restricts any of the Rights listed. The last phrase in the series of Rights — the right to petition the government for a redress of grievances — makes it clear that every citizen has the constitutionally protected Right to **petition** the Government for a **redress** of **grievances**. It is one of our most comprehensive Rights; and one of the ways the Constitution guards against Government abuses, in order to prevent Government officials who are vested with authority from becoming oppressors.

The right to petition the Government for a redress of grievances means that a citizen has the right to file a lawsuit against the Government. Since this country was born, a person who files a lawsuit or complaint has been referred to as a petitioner. One of the first governing documents that *We the People* used was the Articles of Confederation. A portion of Article IX of the Articles of Confederation reads:

> The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: — Whenever the legislative or executive authority or lawful

> agency of any State in controversy with another shall present a *petition* to Congress *stating the matter in question and praying for a hearing*, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen . .

In the Articles of Confederation, a State presented its appeal of a dispute against another State in the form of a petition. In the *Marbury v. Madison* opinion at 163, Chief Justice Marshall points out that "In Great Britain the king himself *is sued in the respectful form of a petition*, and he never fails to, comply with the judgment of his court."

There are several methods of petitioning the Government for a redress of grievances. The filing of a lawsuit by a citizen is only **one** method of petitioning the Government for a redress of grievances. The First Amendment protects **all** of the methods that a citizen may use to petition the Government for a redress of grievances. Congress is the only Government body granted law-making power by the Constitution. If Congress is prevented from making a law, then no law can be made.

Sovereign, absolute and qualified immunities are not based on any law passed by Congress. The Supreme Court established sovereign, absolute, and qualified immunity. These immunities are the result of the personal views of the Justices of the Supreme Court based on what the Justices believe the law *should be* — not what the law actually is. The Supreme Court adopted these immunities because the Justices on the Supreme Court believe that these immunities are necessary (1) for the proper functioning of the Government and (2) to protect the Government and Government officials from lawsuits filed by citizens to redress grievances against the Government or Government officials. The Justices of the Supreme Court use "the common-law" as a basis for these immunities.

The Supreme Court uses the following rationale to explain common-law immunities: "Our cases have proceeded on the assumption that common-law principles of legislative and judicial immunity were incorporated into our judicial system and that they should not be abrogated absent clear legislative intent to do so." See Pulliam v. Allen, 466 U.S. 522, 529; Pierson v. Ray, 386 U.S. 547, 554-555 (1967); and Tenney v. Brandhove, 341 U.S. 367 (1951). The first question requiring an answer is "by whom, or by what, and when were these common-law principles of legislative and judicial immunities incorporated into our judicial system?" The second question requiring an answer is "were these immunities incorporated into our judicial system by lawful authority?"

Common-law is not based on the Constitution or any laws passed by Congress. The Constitution is the supreme law of the land and it delegates **the administration of justice** and **the application** of the law of the land to the federal courts. The Constitution does not grant any federal judge the power to decide what laws

or immunities are necessary for the proper functioning of the Government. The power to decide what laws or immunities are necessary for the proper functioning of the Government, with some exceptions to that power, is specifically **given to Congress** in Article I of the Constitution. Federal judges, including the Justices on the Supreme Court, may not exercise the power of law-making because they are not granted any law making authority in the Constitution. Deciding what is and what is not going to be a law of the United States is a law making function and the law-making function belongs to Congress.

The problem with the Supreme Court's reasoning is that the common-law of England **IS NOT** a part of the Constitution or the laws of the United States. If the Constitution incorporated any of those common-law principles, then we would find wording in the Constitution similar to "such parts of the common-law . . . as did form the law of . . . on the nineteenth day of April, one thousand seven hundred seventy-five . . ." The New York State Constitution has just such wording in it and it was in existence before the Constitution. The Commonwealth of Virginia, in the Code of Virginia, Title 1, Chapter 2, Section 1-10, also incorporated the common-law into its law by stating "The common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly." The Framers could have included the wording from either the New York State Constitution or the Code of Virginia in the Constitution. They chose not to. In Article VI of the Constitution, the Framers included a provision for all debts and engagements entered into *before* the Constitution to be valid under the Constitution, as under the Confederation. The Framers

could have included similar wording regarding the common-law. They chose not to. The Constitution does not incorporate any common-law principles of immunity.

Congress has not incorporated any common-law immunity into the laws of this country. Justices of the Supreme Court incorporated these common-law immunities into the laws of the United States, but the Constitution does not grant the Justices of the Supreme Court the power to incorporate common-law immunities into the laws of the United States. Therefore, lawful authority did not incorporate these common-law immunities. Thus, the common-law immunities granted to the Government by the Supreme Court are unconstitutional.

We must remember that the Constitution says that the Constitution is the supreme law of **this** country. Before the Supreme Court can establish any immunity based on the common-law, the Constitution or a law passed by Congress must incorporate the common-law into the federal law. Justice Brandeis points out in the 1938 case of Erie R. v. Tompkins, 304 U.S. 817, 822 that there is no federal common-law. The Constitution requires federal judges to uphold the Constitution and the laws of the United States. The Justices of the Supreme Court are without any authority or basis for sovereign, absolute, and qualified immunity.

In *Marbury v. Madison* at 164-165 and 170, Chief Justice Marshall makes it clear that sovereign, absolute, and qualified immunities cannot be based on common-law and that these immunities do not exist in the United States. He said,

> Is it to be contended that where the law in precise terms, directs the performance of an act, in which an individual is interested, the law is incapable of securing obedience to its mandate?

> Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country? Whatever the practice on particular occasions may be, the theory of this practice will certainly never be maintained. No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law.
>
> If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law.

The Constitution explicitly guarantees, in the First Amendment, that each citizen will always have the Right and the opportunity to have his grievance against the Government heard. A United States citizen's Right to sue the Government for wrongs committed is a right retained by the People that has never been surrendered to the Government. Thus, when a citizen of the United States sues the Government, or any Government official, the Constitution forbids the defense of sovereign, absolute, or qualified immunity. These immunities inhibit the exercise of the constitutionally protected Right of a citizen to petition for a redress of grievances. At the very least, they dictate and limit how citizens may petition the Government for redress of grievances. Dictating and limiting how citizens may petition the Government for redress of grievances is also forbidden by the First Amendment to the Constitution.

Federal judges require an express waiver of sovereign immunity by Congress before a citizen may bring a lawsuit against the Government. Before Congress may waive sovereign immunity, there must be something that grants the Government sovereign immunity. Nothing in the Constitution or federal law provides a grant of sovereign immunity. It is the expressed will of the People of the United States, stated plainly and specifically in the First Amendment to the Constitution of the United States, that the Government can be sued by an citizen. Federal judges, by requiring that Congress must first give its permission before a citizen may bring a lawsuit against the Government for a redress of grievances, have built upon a foundation not present in, and indeed contrary to, the Constitution.

In the case of Imbler v. Pachtman, 424 U.S. 422-423, 96 S.Ct. 984, 991, the Supreme Court stated that "public policy" requires absolute and qualified immunity for some Government officials. The "public policy" referred to by the Supreme Court does not exist in the Constitution or in any law written by Congress. In order to establish absolute and qualified immunity for certain Government officials, Justices of the Supreme Court simply decided what the public policy is for our country. The Constitution grants the elected members of Congress the power to decide what "public policy" is. Congress has never established any such "public policy." The Justices of the Supreme Court are not granted the power to decide what public policy is and then decide cases based on their own concept of what that public policy requires. According to the Constitution, the Supreme Court's functions are to decide cases based on what *is* in the Constitution and to interpret the laws based on what Congress has written. It is the duty of the Justices of the Supreme Court to subordinate their own personal views

and to subordinate their own ideas of what legislation is wise and what is not.

The First Amendment prevents Congress from establishing such a "public policy." The Framers decided that these immunities are not necessary for the Government to fulfill its governmental functions. "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." Establishing such a "public policy" would abridge (restrict) the right of the people to petition the Government for a redress of grievances.

In Article I, Section 6, the Constitution grants members of Congress limited immunity (they are in all cases, except treason, felony and breach of the peace, privileged from arrest during their attendance at, and in going to and from, the session of their respective houses, and they cannot be questioned in any place other than their respective House for any speech or debate in either House). The Framers of the Constitution knew how to grant immunities to the Government. The Framers could have granted the Government or any Government official any immunity they saw fit. However, they decided that sovereign, absolute, and qualified immunities are not necessary for the Government to fulfill its governmental functions. The implementation of immunity defenses by Federal judges for the Government, or for Government officials, to suits brought against the Government by citizens of the United States has caused a tear in the cloth that is the foundation of this nation and infringes on a citizen's constitutional rights and freedoms.

The government contractor immunity was established by federal judges based on the reasoning that a government contractor shares the sovereign immunity of the Government. There is no sovereign immunity for the Government, so the government contractor immunity cannot exist.

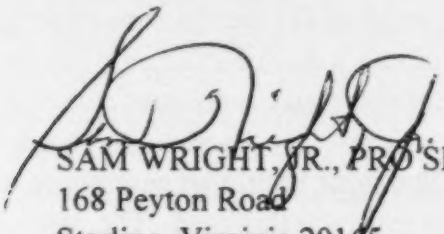
In order for any of the immunities discussed above to be constitutional, the Constitution must grant Federal judges the power to create laws and the power to decide what immunities are necessary for the proper execution of the powers vested in the Government or in any department or officer thereof. Of course, this is not so.

The district court's decision, which was affirmed by the Court of Appeals, is that your Petitioner does not have standing to bring this suit. The district court's decision is error. Petitioner alleges in his complaint that he and others similarly situated have suffered injury in fact as a result of (1) the doctrine of sovereign immunity, (2) the Judiciary Act of 1925, and (3) the Supreme Court's arbitrary and capricious denial of a petition for a writ of certiorari. At the pleading stage, the district court decided that your Petitioner cannot prove a variety of issues necessary to this case. The district court's decision is not based on the evidence because the only evidence before the district court was Petitioner's verified complaint and verified response to the Respondent's motion to dismiss. The decisions of the district are based solely on the unsupported assertions of the Respondent. Respondent asserted sovereign immunity as a defense to this suit that challenges the constitutionality of sovereign immunity. This Court has firmly established that your Petitioner need not prove any of the allegations in the complaint at the pleading stage. The district court is not at liberty to speculate on what proof a litigant will be able to produce and then deny him the right to present his case based on that speculation.

CONCLUSION

This case presents important questions concerning the functioning of this Court that ought to be decided by this Court. If the Constitution has any substance, then this Court should issue a writ of certiorari to the United States Court of Appeals for the Fourth Circuit. This Court should use its authority to bring up this entire case for a decision from this Court.

Respectfully submitted,



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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

SAM WRIGHT, JR.,	)
	)
Plaintiff,	)
	)
v.	)Civil Action
	)No. 98-277
	)
THE UNITED STATES OF AMERICA,	)
	)
Defendant.	)

ORDER

This matter came before the Court on Defendant's motion to dismiss. For the reasons stated in the accompanying memorandum opinion, it is hereby

ORDERED that Defendant's motion is GRANTED and this case is DISMISSED.

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
May 18, 1998.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

SAM WRIGHT, JR.,	)
	)
Plaintiff,	)
	)
v.	)Civil Action
	)No. 98-277
	)
THE UNITED STATES OF AMERICA,)	
	)
Defendant.	)

MEMORANDUM OPINION

This matter came before the Court on Defendant's motion to dismiss. This action stems from a previous matter in which Plaintiff filed a complaint with the New York legal licensing authorities against a Federal Aviation Administration (FAA) attorney, Mary McCarthy. In that complaint, Plaintiff alleged that McCarthy behaved unethically in some fashion while representing the FAA in a case where the Plaintiff, a non-attorney, represented a co-worker before the Merit Service Protection Board (MSPB). When the Department of Justice defended McCarthy before the licensing board, Plaintiff filed suit to temporarily restrain and preliminarily enjoy it from representing her, although he had no personal stake in either the outcome of the MSPB matter or the outcome of the investigation of McCarthy by the New York licensing authorities. This court denied Plaintiff's motion and dismissed the suit with prejudice for lack of subject matter jurisdiction on the grounds that

the government had not waived sovereign immunity. The Fourth Circuit Court of Appeals affirmed the ruling.

Plaintiff lacks standing to bring this suit. Article III, § 2 of the Constitution, conferred upon federal courts the jurisdiction to hear only matters involving cases or controversies. To satisfy this "case or controversy" requirement, courts have long held that a plaintiff bringing an action in the federal courts must have standing to bring that action. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 559-60 (1992). The standing doctrine has three essential components: injury, causation and damages. See Marshall v. Meadows, 105 F.3d 904, 906 (4thCir. 1997).

In this case, Plaintiff cannot satisfy any of these elements. The sole injury that Plaintiff alleges is the dismissal of his previous case because the government had not waived sovereign immunity. Merely alleging that Plaintiff has been injured is insufficient to confer standing. The alleged injuries must be concrete and actual or imminent, not conjectural or hypothetical. See Steel Co. v. Citizens for a Better Environment, 118 S.Ct. 1103, 1016 (1998).

Plaintiff implies that had the dismissal not been affirmed by the Fourth Circuit, he would otherwise have prevailed on the merits. However, Plaintiff cannot show he would have won his appeal but for the doctrine of sovereign immunity. Moreover, he cannot show that he was harmed in any way by the Supreme Court's denial of his petition for certiorari. Further, he has not alleged, nor can he show, that any other person he seeks to represent as part of a class action was in fact injured as a result of sovereign immunity being asserted in their cases. As such, any injury that Plaintiff or the class that he seeks to represent has incurred is merely abstract or hypothetical. However, an abstract injury is insufficient to confer standing upon a litigant. See Schlesinger v. Reservists

Committee to Stop the War, 418 U.S. 208 (1974).

Even if Plaintiff could show some type of attenuated injury to satisfy the first element of the standing requirements, Plaintiff fails to show any causation or redressability. Plaintiff has failed to establish a fairly traceable connection between his alleged injury and the government's actions, thus failing the second standing requirement. See Steel Co., 118 S.Ct. at 1016. Without a showing that he would have prevailed had his case not been barred by sovereign immunity, Plaintiff cannot show that his alleged injury was caused by the allegedly unconstitutional practice of writ of certiorari or the doctrine of sovereign immunity. See Simon v. Eastern Kentucky Welfare Rights Organization, Inc., 426 U.S. at 42-3.

There is no waiver of sovereign immunity pursuant to which Plaintiff may bring this suit. Waivers of sovereign immunity are strictly construed.[1] The consent of the United States to be sued cannot be implied, but must be unequivocally expressed and strictly construed. See United States v. Testan, 424 U.S. 392, 299 (1976). If such consent is found, it is strictly construed against the person seeking to sue the government. See Research Triangle Institute v. Board of Governors of the Federal Reserve System, 132 F.3d 985 (4thCir. 1997).

Congress has the constitutional right to condition

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[1] Plaintiff brings this suit under 28 U.S.C. § 1331. However, § 1331 is merely a jurisdictional statute; it does not grant sovereign immunity. See Brown v. Massachusetts, 487 U.S. 879, 887 (1988). Plaintiffs seeking to sue the United States are required to meet the extra condition of establishing an independent right to sue under a statute that expressly waives sovereign immunity before their case may be heard on the merits in federal court. See Randall v. United States, 95 F.3d 339, 345 (4th Cir. 1996), cert. denied 117 S.Ct. 1085 (1997).

its waiver of immunity in any way it pleases. See United States v. Sherwood, 312 U.S. 584, 586 (1941). Accordingly, even after a plaintiff has overcome the presumption of sovereign immunity and found an express Congressional waiver, he must strictly adhere to any and all conditions and procedures that Congress deems fit to attach to the waiver. See id.

There are several statutes under which a plaintiff may sue the United States. One of the most widely invoked is the Federal Torts Claims Act (FTCA) which provides a limited waiver of sovereign immunity. See United States v. Orleans, 425 U.S. 807 (1976). Congress waived sovereign immunity under the FTCA only for (1) money damages (2) for injury or loss of property (3) caused by the negligent or wrongful acts or omissions of a federal employee acting within the course or scope of his employment; and (4) the act or omission constituted a violation of the law of the state within which the act or omission occurred.

Plaintiff does not seek monetary damages in this litigation. He does not claim an injury to his person or any loss of property. He does not allege that the injuries that he claims he has suffered were caused by the negligent or wrongful acts or omissions of a federal employee. Finally, the court's dismissing his case based upon sovereign immunity in no way constitutes a violation of Virginia or any other state law. Thus, Plaintiff cannot show what there has been a waiver of sovereign immunity under the FTCA.[2]

The administrative Procedure Act (APA), 5

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[2] Plaintiff would also had to have presented a claim to the appropriate federal agency prior to bringing this action under the FTCA in district court. 28 U.S.C. §2675(a). This absolute requirement cannot be waived in any way and Plaintiff must comply with it. See Bernard v. U.S. Lines, 475 F.2d 1134 (4th Cir. 1973). There is no indication Plaintiff has filed such a claim.

U.S.C. §702, authorizes a plaintiff to sue the United States for relief other than money damages. Although Plaintiff seeks declaratory relief in this action, he does not state a cause of action which could be properly brought under the APA. Section 702 only authorizes a suit when a plaintiff has suffered legal wrong because of agency action or has been adversely affected by agency action within the meaning of a relevant statute. Plaintiff complains that the harm he suffered is a result of Congress's passing statutes and the Court's refusing to consider his case in accordance with those statutes. However, neither Congress or the Supreme Court are agencies within the meaning of the APA. See Sections 551(1) and 701(b)(1); J.H. Miles & Co. v. Brown, 910 F.Supp. 1138 (E.D.Va. 1995). Thus, because there has been no agency action to review, the APA does not apply.

Finally, Plaintiff fails to state a Little Tucker Act claim. 28 U.S.C. § 1346(a)(2). The Little Tucker Act provides a waiver of sovereign immunity for district courts to hear lawsuits for:

> [a]ny other civil action or claim against the United States, not exceeding $10,000 in amount, founded upon the Constitution, or any Act of Congress, or any regulation of an executive department, or any express or implied contract with the United States . . .

Id. However, the Act has long been construed as authorizing only actions for monetary judgments and not suits for equitable relief against the United States. See Richardson v. Morris, 409 U.S. 464, 464-5 (1971). In the instant case, Plaintiff has only sought equitable relief. He has not sought monetary damages. Therefore, he cannot bring this claim under the Little Tucker Act.

For the above-stated reasons, Defendant's motion to dismiss is granted. An appropriate order shall issue."

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
May 18, 1998.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-2021

SAM WRIGHT, JR.,

Plaintiff - Appellant,

versus

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CA-98-277-A)

Submitted: August 27, 1998 Decided: September 11, 1998

Before NIEMEYER and HAMILTON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Sam Wright, Jr., Appellant Pro Se. Sharon Lee Parrish, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's order dismissing his civil action against the United States. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Wright v. United States, No. CA-98-277-A (E.D. Va. May. 18, 1998). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED